

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Document #

24

U.S.C.A. #

U.S.D.C. #

JUDGE:

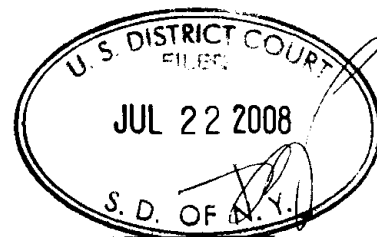
DATE:

Osborne

-v-

Miller**03-cv-2761****RJH****JULY 22, 2008**

INDEX TO THE RECORD ON APPEAL



PREPARED BY (NAME): THOMAS R. PISARCZYK
FIRM: U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK
ADDRESS: 500 PEARL STREET, ROOM 370
NEW YORK, NEW YORK 10007
PHONE NO.: (212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES

DOCUMENT DESCRIPTION

DOC. #

CLERK'S CERTIFICATE

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

**** ONLY CIRCLED DOCUMENTS ARE INCLUDED ******** ALL OTHERS MISSING AT THIS TIME ****

(☒) Original Record

(☐) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
for the Second Circuit on the 22ND Day of July, 2008.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

U.S.C.A. # _____

U.S.D.C. # 03-cv-2761

JUDGE: RJH

DATE: JULY 22, 2008

Osborne

-v-

Miller

Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 23, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

Date Filed

Document Description

BALANCE OF FILE MISSING AT THIS TIME

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 22ND Day of July In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 233RD year.

J. Michael McMahon, Clerk

By _____

[Signature]
Deputy Clerk

APPEAL, CLOSED, PRO-SE

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:03-cv-02761-RJH-DCF
Internal Use Only

Osborne v. Miller
Assigned to: Judge Richard J. Holwell
Referred to: Magistrate Judge Debra C. Freeman
Demand: \$0
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 04/22/2003
Date Terminated: 06/02/2008
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Date Filed	#	Docket Text
04/22/2003	1	Order endorsed on declaration in support of request to proceed in forma pauperis; I.F.P. request is granted. (signed by Chief Judge Michael B. Mukasey) (jjm) (Entered: 04/24/2003)
04/22/2003	2	PETITION for writ of habeas corpus pursuant to 28 USC 2254. (jjm) (Entered: 04/24/2003)
04/22/2003		Magistrate Judge Debra C. Freeman is so designated. (jjm) (Entered: 04/24/2003)
05/13/2003	3	Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for Habeas Corpus. Referred to Magistrate Judge Debra C. Freeman. (signed by Judge Richard C. Casey) (tp) (Entered: 05/15/2003)
08/21/2003	4	Order that the Clerk of the Court shall serve upon the Attorney General of the State of New York and the District Attorney General of the State of New York, by certified mail, a copy of this Order, the petition, any documents filed in support of the petition, and the form for consent to proceed before a United States Magistrate Judge. If both parties consent to refer this case to a United States Magistrate Judge for all purposes, the consent form should be executed and returned to the Court (signed by Magistrate Judge Debra C. Freeman) PET: 7001A 2510 0006 3008 9196, returned on **/**/03. AG: 7001 2510 0006 3008, returned on **/**/03. DA: 7001 2510 0006 3008 9212, returned on 8/29/03.(jco) Modified on 10/17/2003 (Entered: 09/03/2003)
09/24/2003	5	ORDER; upon reconsideration, Petitioner's request for a stay of these proceedings is Granted, so that he may exhaust his state court remedies with respect to his claim of ineffective assistance of appellate counsel, and, if necessary, add that claim to his pending habeas petition. ; within 30 days of a ruling by the New York Court of Appeals on Petitioner's request for leave to appeal the denial of arit of error coram nobis, Petitioner shall file with this Court the documents as stated herein. If petitioner fails to fulfill the conditions set out in paragraph 2 herein, this Court may vacate the stay nunc pro tunc as of the date of this Order and may recommend dismissal of the petition ; this action is hereby transferred to the suspense docket of this Cour pending further order of the Court ; (signed by Magistrate Judge Debra C. Freeman) ; Copies mailed (djc) (Entered: 09/26/2003)
04/11/2005	6	ORDER that pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the U.S. District Courts, the respondent shall serve and file an answer or motion no later than 7/11/05. Responding papers shall include the transcripts and records of all relevant trial and post-conviction proceedings, the briefs submitted an appeal, and such other information as may be necessary for this Court to determine whether petitioner has exhausted his state remedies. Petitioner shall serve and file reply papers, if any, no later than 8/15/05. So Ordered. (Signed by Judge Debra C. Freeman on 4/7/05) "Copies Mailed By Chambers"(jco,) (Entered: 04/13/2005)
04/11/2005		Set Answer Due Date purs. to 6 Order as to David L. Miller answer due on 7/11/2005. (jco,) (Entered: 04/13/2005)
07/12/2005	7	MEMORANDUM OF LAW in Opposition to Petitioner's Application for a Writ of Habeas Corpus. Document filed by David L. Miller. (djc,) (Entered: 07/13/2005)
07/12/2005	8	DECLARATION of Danielle L. Attias in Opposition to Petition for a Writ of Habeas Corpus. Document filed by David L. Miller. (djc,) (Entered: 07/13/2005)
07/15/2005	9	MEMORANDUM OF LAW in Opposition re: 2 Petition for Writ of Habeas Corpus. Document filed by David L. Miller. (jmi,) (Entered: 07/19/2005)
07/15/2005	10	DECLARATION of Danielle L. Attias in Opposition to : 2 Petition for Writ of Habeas Corpus. Document filed by David L. Miller. (jmi,) (Entered: 07/19/2005)
07/15/2005	11	STATE COURT TRANSCRIPT of proceedings in the Supreme Court, County of New York, Case Number 5538/97, held on 12/22/1997 before Judge Bruce Allen.(jmi,) (Entered: 07/19/2005)
07/15/2005	12	STATE COURT TRANSCRIPT of proceedings in the Supreme Court, County of New York, Case Number 5538/97, held on 3/18/1998 before Judge Bruce Allen.(jmi,) (Entered: 07/19/2005)
08/02/2005	13	ENDORSED LETTER addressed to Magistrate Judge Freeman from Randall Osborne dated 7/27/2005 re: Petitioner's request for an extension of time of 60 days to respond to the Respondent's Affidavit and Memorandum of Law in Opposition to Petitioner's application for a Writ of Habeas Corpus is granted. (Signed by Judge Debra C. Freeman on 8/1/2005) (jsa,) Modified on 8/3/2005 (jsa,). (Entered: 08/03/2005)
10/04/2005	14	REPLY AND MEMORANDUM OF LAW in response to re: 9 Memorandum of Law in Oppisition. Document filed by Randall Osborne. (sac,) (Entered: 10/06/2005)
06/30/2006	15	REPORT AND RECOMMENDATIONS: For the foregoing reasons, I recommend that the petition for a writ of habeas corpus be dismissed in its entirety. Further, I recommend that the Court decline to issue a certificate of appealability pursuant to 28 U.S.C. 2253 (c)(1)(a), because petitioner has not made a substantial showing of the denial of a constitutional right Objections to R&R due by 7/14/2006 (Signed by Judge Debra C. Freeman on 6/28/06) (js,) (Entered: 06/30/2006)
07/12/2006	16	ENDORSED LETTER addressed to Judge Richard C. Casey from Randall Osborne dated 7/6/06 re: pro se plaintiff requests that he be afforded an extension of time of sixty days to respond to the Magistrate Judge Report and Recommendation. Application granted. Petitioner will have until 8/28/06 to respond to the Report and Recommendation. It is so ordered. (Signed by Judge Richard C. Casey on

		7/11/06) (dle,) Modified on 7/13/2006 (dle,). (Entered: 07/13/2006)
09/05/2006	17	OBJECTION to 15 Report and Recommendations Document filed by Randall Osborne. (djc,) (Entered: 09/07/2006)
05/17/2007	19	ORDER This case was assigned to Judge Richard Conway Casey, who passed away on 3/22/07. The case will be reassigned to a new judge in the near future. You will be notified of the reassignment on ECF (for ECF cases) or in a form to be mailed to you (for non-ECF cases). The parties in this case are ordered to review the attorney/party information on the docket sheet and determine whether the information presently listed is incorrect. If an error exists, the affected party must submit updated contact information no later than 5/30/07. Parties should take care to remove the contact information for attorneys no longer involved in the case and to enter appearances for any current attorneys who are not listed. The parties are also ordered to submit a joint summary of the case no later 5/30/07. The Summary should be sent to Judge Caseys Chambers Attn: Law Clerks and will be provided to the new judge upon reassignment of the case. The Summary should be a bare statement of the case with any relevant procedural history. This includes, but is not limited to, the subject matter of the litigation, whether discovery is complete, whether the case is or has been before a magistrate judge, whether there are any motions or applications pending, and the subject matter of the pending motions or applications, if any. Be sure to indicate whether the parties have entered into a case management plan and list the relevant dates. The Summary is not a vehicle for arguing the merits of disputed issues and should be brief. If the defendant in this case has not yet appeared, the plaintiff should indicate this fact and need not make a joint submission. Parties in cases involving an incarcerated pro se litigant need not make a joint submission. Should matters arise prior to the reassignment, parties are directed to review the previously issued Notice to Parties with Pending Civil Cases Before Judge Casey, available at www.nysd.uscourts.gov and follow the directions therein. (Signed by Judge Kimba M. Wood on 05/16/2007) (mj) (Entered: 05/24/2007)
05/21/2007	18	NOTICE OF CASE REASSIGNMENT to Judge Richard J. Holwell. Judge Richard C. Casey is no longer assigned to the case. (laq) (Entered: 05/22/2007)
05/22/2007		Mailed notice to the attorney(s) of record. (laq) (Entered: 05/22/2007)
06/13/2007	20	ORDER; the Court will decide whether to adopt or reject Report as soon as possible. In the interim, the parties are not required to provide the Court with a case summary. (Signed by Judge Richard J. Holwell on 6/11/07) Copies Mailed And Faxed By Chambers (kco) (Entered: 06/18/2007)
06/02/2008	21	MEMORANDUM OPINION AND ORDER # 96106: For the reasons stated within, the Court adopts the Report and denies the petition for a writ of habeas corpus. In addition, the Court declines to issue a certificate of appealability. the petitioner has not made a substantial showing of a denial of a federal right, and appellate review is therefore not warranted. the Court also finds pursuant to 28 U.S.C. 1915(a)(3) that any appeal from this order would not be taken in good faith. The Clerk of the Court is directed to close this case. (Signed by Judge Richard J. Holwell on 5/30/2008) (jfe)Modified on 6/4/2008 (rw). (Entered: 06/02/2008)
06/02/2008		Transmission to Judgments and Orders Clerk. Transmitted re: 21 Memorandum & Opinion, to the Judgments and Orders Clerk. (jfe) (Entered: 06/04/2008)
06/02/2008		Transmission to Judgments and Orders Clerk. Transmitted re: 21 Memorandum & Opinion, to the Judgments and Orders Clerk. (jfe) (Entered: 06/05/2008)
06/05/2008	22	CLERK'S JUDGMENT That for the reasons stated in the Court's Memorandum Opinion and Order dated May 30, 2008, the report is adopted and the petition for a writ of habeas corpus is denied; accordingly, the case closed; the Court finds that because petitioner has not made a substantial showing of the denial of a federal right, a certificate of appealability will not issue; the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Memorandum Opinion and Order dated May 30, 2008 would not be taken in good faith. (Signed by J. Michael McMahon, clerk on 6/5/08) (Attachments: # 1 notice of right to appeal)(ml) (Entered: 06/05/2008)
06/05/2008		Mailed notice of Right to Appeal to Pro Se Litigant(s): Randall Osborne. (ama) (Entered: 06/05/2008)
06/23/2008	23	NOTICE OF APPEAL from 22 Clerk's Judgment. Document filed by Randall Osborne. Filing fee \$ 5.00, receipt number E 655906. Copies mailed to attorney(s) of record: Attorney General, NYS. (tp) (Entered: 07/18/2008)
06/23/2008		Appeal Remark as to 23 Notice of Appeal filed by Randall Osborne. \$450.00 APPEAL FEE DUE. COA DENIED 5/30/08. (tp) (Entered: 07/18/2008)
07/18/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 23 Notice of Appeal. (tp) (Entered: 07/18/2008)
07/18/2008		Transmission of Notice of Appeal to the District Judge re: 23 Notice of Appeal. (tp) (Entered: 07/18/2008)